Supreme Court, U.S.
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In the Supreme Court of the United States

MICHAEL SAWUKAYTIS
Petitioner, Pro Se

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW[1]

I. May an argument made by a Litigant -based upon Supreme Court precedent- be declared manifestly groundless and frivolous?

II. May sanctions be imposed when a Litigant's argument is based upon Supreme Court precedent, that the income tax is valid and constitutional excise tax?

[1] The style of this case as shown on the front cover of this Petition contains the names of all parties to this case.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Michael Sawukaytis, (herein "Sawukaytis"), hereby petitions this Court for a Writ of Certiorari to the to the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit Court of Appeals' unpublished opinion affirming the decision of the Untied States Tax Court was entered June 16th, 2004, and denied for reconsideration on August 6, 2004.

JURISDICTION

The judgment sought for review by this petition was entered in the United States Court of Appeals for the Sixth Circuit on June 16, 2004 and denied for reconsideration on August 6, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RULE AND CONSTITUTIONAL PROVISIONS INVOLVED

1B Moore's Federal Practice ¶ 0.402, at p. 112 & n. 3

Art. I, § 2, cl. 3, United States Constitution

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union***"

Art. I, § 8, cl. 1, United States Constitution

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States***"

Art. I, § 9, cl. 4, United States Constitution

"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken."

Fifth Amendment, United States Constitution

"No person shall be…deprived of...property, without due process of law."

Sixteenth Amendment, United States Constitution

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States. And without regard to any census or enumeration."

STATEMENT OF THE CASE

In this case, Petitioner argued before both the U.S. Tax Court as well as the United States Court of Appeals for the Sixth Circuit -based upon Supreme Court precedent- that the federal income tax is, in the constitutional sense, an excise tax. Rather than examining this issue, both of the courts below expressed credulity that anyone would today challenge the common perception that the income tax is a direct tax, which had been relieved of the requirement of apportionment via the Sixteenth Amendment. However, this common perception is completely erroneous.

In November 2000, Petitioner filed suit in the United States Tax Court against the Commissioner of the Internal Revenue asserting his **threshold position** based upon Supreme Court precedent that the income tax is a valid & constitutional tax, in the nature of an excise and therefore only income (wage income) derived from excise activities are subject to federal taxation.

In June 2002, after the Petitioner presented indisputable evidence on brief and at trial, the Tax Court determined liability based on an erroneous conclusion of law and **declared** the Petitioner's **threshold position** as "manifestly groundless" & "frivolous"[2], sanctioning the Petitioner monetarily.

After obtaining counsel, Petitioner filed a claim of appeal in December 2002, with the United States Court of Appeals for the Sixth Circuit asserting his **threshold position**[3] based

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[2] Memorandum of the U.S. Tax Court. Appendix B, page A-8

[3] "Indeed, it appears that Sawukaytis is simply trying to get us to take a stance on whether or not the income tax is an excise tax". Appendix C, Decision of the 6th Circuit Court, footnote #11, page A-13.

upon Supreme Court precedent that the income tax is a valid & constitutional tax, in the nature of an excise and therefore only income (wage income) derived from excise activities are subject to federal taxation.

In June 2004, after the Petitioner presented indisputable evidence on brief and during oral argument, the Circuit Court affirmed the Tax Court's erroneous decision and sanctioned the Petitioner and Counsel monetarily, rather than reversing & remanding the lower trial court's erroneous decision as required by their authoritative responsibility.

In support of Petitioner's Writ of Certiorari, there indeed exists adequate grounds to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case for reasons that the Order entered June 16 (2004) and denied for reconsideration on August 6 (2004) willfully[4] disregarded Supreme Court precedent (Holding & Dictum) and therefore its decision:

(a) Conflicts with Supreme Court Precedent;
(b) Conflicts with State Supreme Court Precedent;
(c) Involves questions of national importance;
(d) Requires uniformity of its decision with this Court.

[4] The term "willfully" is used due to repetitive judicial error.

FACTUAL REASONS FOR GRANTING WRIT

This Sixth Circuit Court's decision warrants this Court's review because:

A. The Panel's erroneous conclusion of law

This reason is grounded upon the Circuit Court Panel's failure to follow the axiomatic principle that all inferior courts must uphold Supreme Court precedent and, further, that such failure constitutes reversible error:

In 1916, this Court exercised its undisputed authoritative responsibility and interpreted the 16th Amendment. In doing so, its landmark opinion determined that the income tax to be a valid & constitutional indirect tax, in the nature of an excise and the effect of this nature, allows only income (wage income) derived from indirect activities (excises) to be subject to federal taxation. *Brushaber v. Union P. R. Co.*, 240 U.S. 1-19, 36 Sup. Ct. 236, 60 L. Ed. 493, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414; *Stanton v. Baltic Mining Co.*, 240 U.S. 103-112, 36 Sup. Ct. 278, 60 L. Ed. 546.

Brushaber, supra, and *Stanton*, supra, has NEVER been disavowed by any subsequent Supreme Court case.

The most prestigious law school in America published this Court's landmark determination within its journals leaving no doubt what type of tax the federal income tax is. To wit:

> "In Brushaber v. Union Pacific R.R. Co., Mr. Chief Justice White, upholding the income tax imposed by the Tariff Act of 1913, construed the [16] Amendment as a declaration that an income tax is indirect, rather than as making an exception to the rule that direct taxes must be apportioned." (Emphasis added) -- *The*

Income Tax and the Sixteenth Amendment, Harvard Law Review, Vol. 29, pg. 536

Eight years later, this Court confirmed its landmark determination of *Brushaber*, supra, and *Stanton*, supra, by the affirmation of an inferior court's published opinion. To wit:

> "[I]t is clearly established that since the adoption of the Sixteenth amendment, an income tax is never a direct tax. The effect of that change in the Constitution was to take a tax upon income derived from sources which had therefore made it a direct tax out of that category, and put it in the class of excises, duties, and imposts. *Brushaber v. Union P. R. Co.*, 240 U.S. 1-19, 36 Sup. Ct. 236, 60 L. Ed. 493, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414; *Stanton v. Baltic Mining Co.*, 240 U.S. 103-112, 36 Sup. Ct. 278, 60 L. Ed. 546." Cook v. Tait, Collector of Internal Revenue, 286 Fed. 409, 412 (D.C. Md. 1923); **Affirmed 265 U.S. 47**, (1924)

The affirmation of *Cook*, supra, has NEVER been disavowed by any subsequent Supreme Court case.

The Fourth Circuit Court of Appeals published an opinion that acknowledged this Court's landmark determination regarding the nature of our income tax. To wit:

> "The tax is, of course, an excise tax, as are all taxes on income [.]" White Packing Company v. Robertson, 89 F.2d 775, 779 (4th cir. 1937)

Congress published its own opinion regarding the nature of the income tax based on the landmark determination of *Brushaber*, supra. To wit:

> "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of the tax." **House Congressional Record**, Volume 89, Part 2, page 2580 (78th Congress, First Session, March 27, 1943)

Based upon the nature of the federal income tax, the Michigan Supreme Court HELD that all income taxes are excises. *Dooley v. City of Detroit*, 370 Mich 194, (1963).

Citing *Brushaber*, supra, Congress' own Research Service states that the 16th Amendment **restrains** courts from viewing the income tax as a direct tax because of its close affect on the underlying property and therefore the income tax is an **indirect excise tax**[5]

The judicial weight of Supreme Court dictum was historically changed due to the following holding:

> "Dictum in a Supreme Court opinion may be brushed aside by the Supreme Court as dictum when the exact question is later presented, but **it cannot be treated lightly by inferior federal courts until disavowed by the Supreme Court**." Hendricks County Rural Elec. Membership Corp. v. N.L.R.B., 627 F.2d 766 (7th Cir. 1980)(citing 1B Moore's Federal Practice ¶ 0.402, at p. 112 & n. 3); reversed on other grounds, 454 U.S. 170 (1981). (Emphasis added)

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[5] See Pages 1-6 of the American Law Division, CRS Report No. 80-19A (1980)

Citing *Brushaber*, supra, the Federal Court for the Northern District of Texas published an opinion that did acknowledge this Court's landmark determination regarding the nature of our income tax. To wit:

> "Income taxes are classified as duties, imposts and excises or, in other words, indirect taxes, *Brushaber v. Union P. R. Co.*, 240 U.S. 1, 15, (1916), and therefore must be uniform." Apache Bend Apartments, LTD. v. U.S., 702 F.Supp. 1285, 1295 (N.D. Tex. 1988)

The Sixth Circuit Court published an opinion that did acknowledge this Court's landmark determination as well as the Congressional record. To wit:

> "*Brushaber* and the *Congressional Record* excerpt do indeed state that for constitutional purposes, **the income tax is an excise tax**." *United States v Gaumer*, 973 F.2d 723 (6th Cir. 1992) (Emphasis added)

In 1998, under oath, the Commissioner of Internal Revenue filed a qualified admission. To wit:

> "The United States Supreme Court has construed the federal income tax as an indirect tax authorized under Article I, Section 8, Clause 1 of the Untied States Constitution, as amended by the Sixteenth Amendment. See Brushaber v. Union Pacific Railroad, 240 U.S. 1, 16-19 (1916)" *Frazier v CIR*, T.C. Memo, 1999-5, Respondent's Response to Petitioner's Supplemental Request for Admissions, Paragraph Number 3, filed September 29 (1998).

In light of the above & foregoing, the erroneous conclusion of law comes from the undeniable fact that the Circuit Court Panel's decision is based on law in direct

opposition to the precedent set forth by this Court and therefore is erroneous. This reason alone justifies review.

B. The Panel's unwarranted sanctions

This reason is grounded upon the Circuit Court Panel's failure to follow the axiomatic principle that sanctions may not be imposed if the Petitioner's position is judicially endorsed in other published cases and, further, such failure constitutes reversible error:

If a presenter's position has been judicially endorsed in other published cases –even in dissent- that is evidence that the position is warranted under existing law within the meaning of the rules regarding sanctions. See *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 485-86 (3rd Cir. 1987)

According to the Circuit Court Panel's own published opinion, sanctions can only be imposed IF the Petitioner's position is (1) not well grounded in fact, (2) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, or (3) interposed for any improper purpose such as harassment or delay. See *Smith v Detroit Federation of Teachers Local 231*, 829 F. 2d 1370, 1379 (6th Cir. 1987)

In light of the above & foregoing, the unwarranted sanction comes from the undeniable fact that the Circuit Court disregarded the fact that the Petitioner's threshold position is endorsed by other published cases. Therefore, sanctioning the Petitioner for presenting a good faith position is erroneous and therefore unwarranted. This reason alone justifies review.

C. The Panel's appearance of bias

This reason is grounded upon the Circuit Court Panel's failure to follow the axiomatic principle that due process is denied by circumstances that create the likelihood or the appearance of bias and, further, such circumstances constitutes reversible error:

This Court has held that even if there is no showing of actual bias by the trier of fact, due process is denied by circumstances that create the likelihood or the appearance of bias. See *Peters v. Kiff*, 407 US 493, 502 (1971).

In the published case of *Gaumer*, supra, Mr. Gaumer had many views and was denied to enter any exhibits in the lower court, which he believed, contained relevant & material in support of his **threshold position** that the federal income tax is an excise. After reviewing Mr. Gaumer's views and hundreds of exhibits, the Gaumer Court determined that only one of Mr. Gaumer's views with exhibits, containing Supreme Court precedent & the Congressional Record, was **relevant & material**. As a result, in its published opinion, the Panel stated the following:

> "*Brushaber* and the *Congressional Record* excerpt do indeed state that for constitutional purposes, **the income tax is an excise tax**." [ ] Mr. Gaumer should have therefore been allowed to present the contents of the exhibits to the jury to the extent that **the material was relevant**. [ ] At minimum, however, defendant Gaumer should have been allowed to read **relevant exhibits** to the jury. [ ] We therefore VACATE the conviction and REMAND the case for a new trial." *Gaumer*, supra, at 725 (bold & underline added).

Mr. Gaumer's excise tax position was neither frivolous nor was he sanctioned. Quite opposite, the Circuit Court Panel recognized the precedent set forth by *Brushaber*, supra, and granted Mr. Gaumer a new trial to introduce such evidence.

The Circuit Court Panel (in its unpublished opinion) acknowledged that the Petitioner relied on the "quot[e] from United States v. Gaumer, 972 F.2d 723, 725 (6th Cir. 1992), **in which we noted** 'Brushaber and the Congressional Record excerpt do indeed state that for constitutional purposes, the income tax is an excise.' " Panel decision, page A-15 (bold & underline added).

In light of the above & foregoing, the likelihood or appearance of bias from the Circuit Court Panel comes from the undeniable fact that the Panel was aware of *Brushaber,* supra, *Stanton,* supra, *Cook*, supra, and overlooked its own published opinion *Gaumer*, supra, in order to declare the Petitioner's threshold position as "manifestly groundless" & "frivolous". This reason alone justifies review.

D. The Panel's abuse of discretion

This reason is grounded upon the Circuit Court Panel's failure to follow the axiomatic principle that a failure to exercise sound, reasonable, and legal decisions-making skills is considered "abuse of discretion" and, further, such failure constitutes reversible error:

According to this Court, ANY decision or ruling will be termed an "abuse of discretion" if the adjudicator has failed to exercise sound, reasonable, and legal decisions-making skills. See *Wilton v. Seven falls Co.,* 515 U.S. 277 (1995) and *General Electric Co. v. Joiner*, 522 U.S. 136 (1997).

In light of the above & foregoing, abuse of discretion comes from the undeniable fact that the Circuit Court chose to disregard Supreme Court precedent and the subject Moore's Federal Practice, which demonstrates failure to exercise sound, reasonable, and legal decisions-making skills. This reason alone justifies review.

CONCLUSION

Analytically, the record shows (and instant Petition verifies) a conflict within the Circuit Court insofar that the subject **unpublished** (Sawukaytis v. CIR, No. 02-2431) opinion/decision does indeed contradict –in part- a previous 6th Circuit Panels **published** (*Gaumer,* supra) decision.

Moreover, such record conflicts within the Circuit Court insofar that the subject **unpublished** opinion/decision does indeed contradict with the precedent set forth in a Supreme Court (Drushaber) opinion, affirmed by *Cook,* supra, and several other inferior court published opinions.

In light of the above & foregoing, Petitioner strongly believes the Sixth Circuit Court has handed down brutal injustice, and therefore, Petitioner respectfully suggests that instant Petition should be granted in order to:

(1) reverse the subject unpublished opinion/decision by the Sixth Circuit Court entered on June 16th, 2004, denied for reconsideration on August 6th, 2004; and
(2) stay the resultant mandate by the Sixth Circuit Court entered September 30 (2004); and
(3) remand Petitioner's case based upon on the grounds that the income tax is a valid & constitutional excise tax and only income (wage income) derived from excise taxable activities are subject to federal income taxation.

In the event that this Writ is granted, Petitioner is prepared to have qualified Counsel for oral argument.

WHEREFORE, it is prayed that this Honorable Court grant instant Petition. Dated and respectfully submitted this _____day of October 2004.

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APPENDIX A
Decision of the U.S. Tax Court

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Docket No. 1167-00.

MICHAEL SAWUKAYTIS
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion filed June 19, 2002 it is

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner in the amount of $13,976 for the taxable year 1996;

That there is an addition to tax due from petitioner under I.R.C. section 6651(a)(1) in the amount of $726 for the taxable year 1996; and

That there are damages due from petitioner, which are hereby awarded to the United States, in the amount of $12, 500 pursuant to I.R.C. section 6673.

Juan F. Vasquez
Judge

ENTERED: June 19, 2002

APPENDIX B
Memorandum of the U.S. Tax Court

T.C. Memo. 2002-156

UNITED STATES TAX COURT

MICHAEL SAWUKAYTIS, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 11672-00.

Michael Sawukaytis pro se.

Kimberly J. Webb, for respondent,

MEMORANDUM FINDINGS OF FACT AND

OPINION

VASQUEZ, Judge: Respondent determined a deficiency of $13,976 and an addition to tax of $726 pursuant to section 6651(a)(1)[1] in Petitioner's 1996 Federal income tax.

[1] All section references are to the Internal Revenue Code in effect for the year in issue and all Rule references are to the Tax Court Rules of Practice and Procedure.

The issues for decision are: (1) whether petitioner received gross income subject to tax, as determined by respondent; (2) whether petitioner is liable for an addition to tax for failing to file a Federal income tax return for 1996; and (3) whether petitioner engaged in behavior warranting the imposition of a penalty pursuant to section 6673 (a).

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. At the time he filed his petition, petitioner resided in Ann Arbor, Michigan.

During 1996, petitioner was employed at the Ford Motor Co. (Ford). In 1996, Ford paid petitioner $69,699 in wage income. In 1996, petitioner received a $162 State tax refund for 1995 and $29 of interest from a credit union.

Petitioner did not file a Federal income tax for 1996. Pursuant to section 6020(b), respondent prepared a substitute for return for petitioner.

OPINION

Section 61 defines gross income as all income from whatever source derived. Gross income includes compensation for services and interest. Sec. 61(a)(1), (4).

Petitioner does not challenge the facts on which respondents determinations are based or respondent's calculation

of tax.[2] Petitioner stipulated that during 1996 he received compensation from Ford. At trial, petitioner testified that during 1996 he received interest income and a State tax refund.

In motions, at trial, and on brief, petitioner advanced shopworn arguments characteristic of tax-protester rhetoric that has been universally rejected by this and other courts. Wilcox v. Commissioner, 848 F, 2d 1007 (9th Cir. 1988), affg. T.C. Memo. 1987-225; Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986). Petitioner argues that the income tax is an excise tax and that he did not engage in excise taxable activities in 1996.[3] We shall not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984). Accordingly, we sustain respondent' s deficiency determination.

Respondent also determined that petitioner is liable for an

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[2] Cf . sec. 7491(a), effective for court proceedings arising in connection with examinations commencing after July 22, 1998. Petitioner does not contend that his examination began after July 22 1998, or that sec. 7491(a) is applicable to his case. In any event, we do not find that resolution of this case depends on which party has the burden of proof. We resolve the issue on the basis of a preponderance of evidence in the record. Regardless of which party has the burden of proof, we still sustain respondent's deficiency determination for the reasons stated below.

[3] Petitioner testified: "The income tax is an excise tax. Congress, who sets the laws, even says so in the Congressional Record. The income tax is therefore not a tax on income."

addition to tax pursuant to section 6651(a)(1). Section 6651(a)(1) imposes an addition to tax for failure to file a return on the date prescribed (determined with regard to any extension of time for filing), unless the taxpayer can establish that such failure is due to reasonable cause and not due to willful neglect. Rule 142(a); United States v. Boyle, 469 U.S. 241, 245 (1985).[4]

Petitioner stipulated that he did not file a return for 1996, and he offered no evidence showing that his failure to file was due to reasonable cause and not due to willful neglect. Accordingly, we hold that petitioner liable for the addition to tax under section 6651(a)(1).

Section 6673 (a) (1) authorizes this Court to require a taxpayer to pay to the United States a penalty not to exceed $25,000 if the taxpayer took frivolous positions in the proceedings or instituted the proceedings primarily for delay. A position maintained by the taxpayer is "frivolous" where it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986).

On May 10, 2001, petitioner filed a request for admissions.

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[4] Cf. sec. 7491(c), effective for Court proceedings arising in connection with examinations commencing after July 22, 1998. Petitioner does not contend that his examination began after July 22, 1998, or that sec. 7491(c) is applicable to his case.

Most of the requested admissions regarded respondent's opinion about the Sixteenth Amendment and whether the income tax was direct or indirect tax. On May 18, 2001, respondent filed a response to petitioner's request for admissions.

On May 29, 2001, petitioner filed a motion for review of response to petitioner's request for admissions. Petitioner alleged that respondent's responses to petitioner's paragraphs regarding respondent's opinion about the Sixteenth Amendment and whether the income tax was a direct or indirect tax were insufficient.[5]

On July 7, 2001, the Court denied petitioner's motion for review of response to petitioner's request for admissions. The Court found that respondent's answers were sufficient.

On August 3, 2001, petitioner filed a motion to reconsider the Court's order of July 7, 2001. Petitioner stated that he was seeking respondent's position on a point of law regarding the nature of the income tax. On August 6, 2001, the Court denied this motion.

On September 4, 2001, petitioner filed a motion for leave to file interlocutory appeal seeking review of the Court' s denial of petitioner's motion to reconsider Court's order of July 7, 2001. Petitioner stated that he was seeking respondent's "policy and

[5] Respondent objected to these paragraphs on the ground that the request for admissions sought admissions based on statements of law rather than statements of fact.

procedure" on a point of law regarding the nature of the income tax. On September 27, 2001, the Court denied this motion.

On September 17, 2001, petitioner filed a motion to quash subpoena duces tecum. The subpoena required petitioner to appear 30 minutes before the trial and to bring certain documents with him. On October 5, 2001, the Court denied this motion.

On October 23, 2001, petitioner filed a motion for reconsideration of the Court's order of October 5, 2001. On October 24, 2001, the Court denied this motion.

On December 3, 2001, over a month after the trial of this case, petitioner filed a motion to reconsider the denial of motion to quash subpoena duces tecum. On December 11, 2001, the Court denied this motion.

At trial, the Court warned petitioner that his arguments were frivolous and of the provisions of section 6673. Petitioner filed several frivolous documents with the Court. Petitioner's position, based on stale and meritless contentions, is manifestly frivolous and groundless and he has wasted the time and resources of this Court. Accordingly, we shall impose a penalty of $12,500 pursuant to section 6673.

To reflect the foregoing,

Decision will be entered for respondent.

APPENDIX C
Decision of the 6th Circuit Court

NOT RECOMMENDED FOR PUBLICATION
FILED JUNE 16, 2004
LEONARD GREEN, CLERK

NO. 02-2431

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ON APPEAL FROM THE UNITED STATES TAX COURT

MICHAEL SAWUKAYTIS
Petitioner-Appellant
v.
COMMISSIONER OF INTERNAL REVENUE
Respondent-Appellee

BEFORE: BOGGS, Chief Circuit Judge, DAUGHTREY, Circuit Judge, and ALDRICH,* District Judge.

PER CURIAM. Petitioner Michael Sawukaytis appeals the Tax Court's decision upholding the determination by the Commissioner of Internal Revenue that there was a deficiency in Sawukaytis's income tax payments for the tax year 1996. Sawukaytis earned close to $70,000 in wages that year but did not file an income tax return. He claims that because the federal income tax is an "excise tax" and because he was told by the government that he did not participate in any excise-taxable activities in 1996, he was

not required to file a return. He also claims that the Tax Court erred in denying his motions to

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*The Hon. Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

review and strike the response given to his request for admissions and that the Tax Court was biased, or at least appeared to be biased, against him. We find no reversible error and affirm the Tax Court's rulings on the merits.

In addition, Sawukaytis appeals the Tax Court's decision to award damages in the amount of $12,500 against him, pursuant to 26 U.S.C. Sec. 6673, for filing "several frivolous documents with the Court," asserting claims "based on stale and meritless contentions," taking a position in the Tax Court that was "manifestly frivolous and groundless," and otherwise "wast[ing] the time and resources of th[e] Court." The Commissioner has filed a motion in this court requesting that Sawukaytis be sanctioned an additional $4,000 for filing a frivolous appeal. We conclude that both sanctions are merited.

FACTUAL AND PROCEDURAL BACKGROUND

Although Michael Sawukaytis was employed at Ford Motor Company in 1996 and earned $69,699, he did not file a tax return for that year. When the IRS sent him a notice of deficiency, informing him that he owed $13,976 in taxes, plus interest, and a penalty for his failure to file the return, Sawukaytis, acting pro se, filed a petition in the United States Tax Court objecting to the notice of deficiency. He subsequently filed a document styled "request for admissions" that included such statements as: "Respondent is of the opinion that the income tax is a direct tax and, because of the exception provided by the Sixteenth Amendment,

need not be apportioned," and "Respondent is of the opinion that there is no credible evidence to support a position that the income tax is an indirect tax." The Commissioner declined to admit or deny these "requests," pointing out that they were not statements of fact that could be admitted or denied. Sawukaytis then filed a motion for review of the Commissioner's response and various other pretrial motions, all of which were denied by the Tax Court judge assigned to the case.

Sawukaytis continued to represent himself at trial and contended based upon his reading of the United States Constitutions that the federal income tax is an excise tax. He also asserted that the IRS had informed him by letter that he had not been involved in excise-taxable activity during 1996, from which he concluded that he did not owe any taxes for that year. During Sawukaytis's testimony, the Tax Court judge warned him that under the Internal Revenue Code, sanctions could be imposed for submitting wholly frivolous arguments and that his arguments appeared to be frivolous.

In his memorandum opinion, the Tax Court judge sustained the Commissioner's deficiency determination in the amount of $13,976, finding that Sawukaytis had "advanced shopworn arguments characteristic of tax-protester rhetoric that has been universally rejected by this and other courts." The court also held that Sawukaytis was liable under 26 U.S.C. Sec. 6651(a)(1) for the additional amount of $726 for failure to file a return on the date prescribed, having offered no evidence that his failure to file was due to reasonable cause. Finally, the court found that Sawukaytis's position was "frivolous and groundless and that he had wasted the time and resources of the court, and imposed a $12,500 penalty under Sec. 6673. Despite the warnings issued by the court during trial and the stiff monetary penalty, the petitioner filed a flurry of post-trial motions, all of which required responses by the respondent and all of which were

ultimately denied.

Represented for the first time by counsel, Sawukaytis now appeals the judgment of the Tax Court.

ANALYSIS

1. Request for Admissions

Sawukaytis contends that the trial judge erred in refusing to force the Commissioner to respond to his requests for admissions, citing *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937), for the proposition that "taxpayers [are entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." we note that under Tax Court Rule 90, "[a] party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action." However, a party may do so only if the matters in the request "relate to statements or opinions of fact or of the application of law to fact." *Id.* Here, the requests did not relate to facts or the applications of law to facts, but were abstract propositions. Hence, the Tax Court did not abuse its discretion in denying Sawukaytis's motion to review the Commissioner's response to his request for admissions or his motion to strike allegations contained in that response.

2. The Deficiency Determination

At trial, Sawukaytis stipulated to the fact that he had earned $69,699 in "wage income" from Ford Motor Company in 1996 and that he did not report that income to the

IRS, resulting in a deficiency assessment. Beyond that stipulation, not much about this case is clear, despite counsel's allegation in the brief filed on the petitioner's behalf that we have before us "the opportunity to settle an area of the law that is fraught with much misunderstanding and confusion" and that our decision in the matter "w[ill] have a far-reaching effect throughout our legal system," Based on oral argument and statements in the brief, it appears that Sawukaytis no longer challenges the fact of the deficiency or the amount of the IRS assessment.[6] His sole contention is that the Congressional Record and the courts - particularly the Supreme Court In *Brushaber v. Union*

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[6] Indeed, it appears that Sawukaytis is simply trying to get us to take a stance on whether or not the income tax is an excise tax. In the conclusion to his brief, he writes: Appellant does not state that he is not a taxpayer; He is not asking this court to determine his liability; He is not trying to enjoin the Internal Revenue Service, by way of injunction, from the collection of taxes; He does not assert that the "income tax" is an unauthorized excise tax as relied upon by Appellee in its inclusion and reliance upon the case of *Everett v. United States of America.* Quite the opposite, Appellant believes the "income tax.' to be an authorized excise tax. That is one of the issues that Appellant wants "the" Appellee to recognize and this honorable court to instruct the lower court to render its decision in conformity therewith.

If the petitioner is not challenging the tax deficiency, however, there is no matter in controversy.

Pacific Railroad Co., 240 U.S. 1 (1916) - have declared the income tax an excise tax, yet he was told by the IRS that in 1996 he did not participate in any activity that would subject him to an excise tax.

In *Martin v. Comm'r.*, 756 F.2d 38 (6th Cir. 1985), we specifically addressed whether, considering Brushaber, the income tax was properly applied to wage earners. In Martin, the petitioner argued that the Tax Court did not have jurisdiction over him because *Brushaber* held that "an income tax is really an excise tax, which can only be assessed against those either licensed or incorporated." *Martin*, 756 F.2d at 40. We responded:

> This argument is baseless. In Brushaber, the Court found the 1913 income tax law to be constitutional. The Court also noted that in Pollock [v. Farmers' Loan and Trust Co., ~ 58 U.S. 601 (1895), a case that pre-dated the establishment of the federal income tax in 1913], it had previously found the taxing of income from professions, trades, employments or vocations to be constitutional in the form of an excise tax. In light of the sixteenth amendment, however, all taxation of income, "from whatever source derived," was found to be constitutional in Brushaber. A multitude of cases following Brushaber have held that the type of revenues and receipts earned by appellant . . . constitute taxable income under the Internal Revenue Code, . . . Appellant's earnings, which are unchallenged here, constitute gross income under the applicable sections of the Internal Revenue Code. Appellant is therefore liable for income taxes, determined to be due....

Id. *Martin* thus confirms that, even considering Brushaber, the income tax applies to wage earners.

Sawukaytis nevertheless claims that "this Honorable Court has unequivocally affirmed the position of the United

States Supreme Court and the position of the United States Congress" that the income tax is an excise tax, quoting from *United States v. Gaumer*, 972 F.2d 723, 725 (6th Cir. 1992), in which we noted that "Brushaber and the Congressional Record excerpt do indeed state that for constitutional purposes, the income tax is an excise tax." However, no reasonable reader of this opinion could construe it as overturning the ruling in *Martin*. *Gaumer* was a criminal case in which the defendant, who was indicted for willfully failing to file federal income tax returns, sought to persuade the jury that he did not have the requisite intent because he sincerely believed that he did not have to pay income taxes. As proof, *Gaumer* wanted to introduce photocopies of three court cases, including *Brushaber*, which he said had caused him to believe that he did not have to pay taxes. In quoting *Brushaber*, we clearly did not hold that the income tax is an excise tax but merely indicated that certain language in the case might lead a jury to find that *Gaumer* honestly believed that he did not have to pay income tax.

We conclude that the petitioner has failed to establish that the Tax Court erred in finding him liable for the amount of the original assessment, as well as the additional amount for failure to file a timely return.

3. Sanctions by the Tax Court

The Tax Court found that Sawukaytis's position in pressing his petition was "frivolous and groundless," that he had "wasted the time and resources of [the] Court," and that he was properly subject to imposition of a penalty of up to $25,000, as authorized under 26 U.S.C. Sec. 6673. The court assessed a penalty of $12,500, a decision that we review for abuse of discretion. See *Wolfe v. Comm'r.*, 4 F.3d 709, 716 (9th Cir. 1993). We find no abuse of discretion in this case.

It is well-settled that wages constitute taxable income. See, e.g., *Perkins v. Comm'r.*,746 F.2d 1187 (6th Cir. 1984).

Sawukaytis appears to think that the can avoid the weight of precedent and forestall imposition of a penalty under Sec. 6673 simply by claiming that his excise-tax argument has been "judicially endorsed." In order to avoid paying taxes on the wages he earned from Ford, however, Sawukaytis must show either that taxing wage income like his is unconstitutional, a position that he has never advocated, or that it is not authorized by statute, a position for which he has produced no legal support.

Moreover, we have labeled as frivolous other cases in which the taxpayer claimed that he did not owe taxes on earned Income. See *id.* at 1188 (sanctioning taxpayer under Federal Rule of Appellate Procedure 38 for filing frivolous appeal); *Martin*, 756 F.2d at 41 (same). Indeed, Sawukaytis was warned by the Tax Court judge that his argument was groundless and that he risked being sanctioned. He persisted nevertheless and now tries to distance himself from cases in which the claims have been deemed frivolous by arguing that, unlike the litigants in those cases, he is not contending that the income tax is unconstitutional. However, just like the litigants in the other cases he is asserting that the income tax does not apply to his wages. The basis for his argument is no more grounded in law than were those constitutional challenges. Given the amount of research that the petitioner conducted in order to file his pro se pleadings In the Tax Court, and in view of the warnings by the trial judge, Sawukaytis should have been fully aware that the courts have uniformly recognized that wages constitute taxable income for purposes of federal tax law.

We decline to overturn the imposition of the Sec. 6673 penalty below, finding that it was fully justified under all the circumstances of this case. Moreover, we reject out of hand the petitioner's current allegation that the rulings of the trial judge were the product of bias or that they raise the appearance of bias. This contention is completely unwarranted. It seems to be based on the fact that the Tax Court judge denied various requests of the petitioner, while

granting those of the respondent. But, as the United States Supreme Court has noted, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (U S. 1994). Given the groundless nature of both the petition and the petitioner's advocacy in this case, the rulings of the trial judge simply cannot be sold to reflect bias against Sawukaytis.

4. Sanctions by this Court

On appeal, the respondent has filed a motion for sanctions pursuant to 28 USC Sec. 1912 and Federal Rule of Appellate Procedure 38, under which we are authorized to award damages and costs against an appellant who has been found to have filed and pursued a frivolous appeal. Certainly, we have no interest in chilling the right of any party to appeal, as we noted in *Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670, 677 (6th Cir. 1999). On the other hand, we have not hesitated to impose sanctions when the appeal is "wholly without merit." *Id.* Specifically, we have warned that we would impose sanctions in cases in which litigants argue that income from wages cannot be taxed. See *Martin*, 756 F.2d at 41 ("In future such cases this court will not hesitate to award damages when the appeal is frivolous..."); *Perkins*, 746 F.2d at 1188-89 ("Litigants are warned that in future cases in which the lower court has clearly explained, as it has here, the frivolous nature of the taxpayer's claim that earned income is not taxable, we will not hesitate to award actual attorney fees to the Commissioner under Rule 38 as it has been uniformly construed.")

Here, Sawukaytis asserts that his appeal is not wholly without merit because of "this Honorable Court's published dicta [in *United States v Gaumer*] which categorically states that 'for constitutional purposes, the income tax is an excise

tax.'" As noted above, however, *Gaumer* does not hold that the income tax is an excise tax; it simply recognizes that a jury, cognizant of language in Brushaber, might understand why a delinquent taxpayer could think so. In fact, the *Gaumer* court specifically said that "as a legal matter, the exhibits do not validate Mr. Gaumer's views [that income taxes are excise taxes and that he was not engaged in any excise-taxable activity~." *Gaumer*, 972 F.2d at 725. We reject as patently unreasonable the petitioner's argument that the *Gaumer* opinion converts his groundless claim into "a colorable issue." To the contrary, we find that Sawukaytis's appeal was obviously frivolous and therefore, grant the respondent's motion for sanctions.

The Commissioner's request for an award of $4,000 is based on records of the Tax Division of the Department of Justice showing that the average expense incurred in the defense of taxpayer appeals in which sanctions were awarded during 1998 and the first half of 1999 was approximately $4,900. We have approved awarding lump-sum damages under Rule 38, rather than requiring a "detailed accounting" of expenses. See, e.g., *Schoffner v. Comm'r*, 812 F.2d 292, 294 (6th Cir. 1987) (awarding $1,200 based on the average award in a recent two-year period). In addition, we have found $4,000 to be a reasonable penalty in at least two recent unpublished decisions in so-called "tax protester" cases. See *United States v. Martin*, 19 Fed. Appx. 345, 346, 2001 WL 1126126 at *1 (6th Cir. 2001); (unpublished decision); *Lawrence v. United States* 229 F.3d 1152, 2000 WL 1182452, at *3 (6th Cir. 2000) (unpublished decision). See also *Stafford v. United States*, 208 F.3d 1177, 1179 (10th Cir. 2000) (imposing $4,000 award to the Commissioner in a frivolous tax case). We conclude that $4,000 is a reasonable penalty here and grant sanctions in that amount.

The Commissioner also requests that the award be assessed against Sawukaytis's attorney, Robert V. Mackovski jointly and severally with Sawukaytis. We have noted that

"[w]here a client reasonably relies on the advice of counsel, it may be that a sanction for a frivolous appeal is properly imposed on the attorney if the appeal is without merit or substance." *Wilton Corp.*, 188 F.3d at 677. In addition, 28 U.S.C. Sec. 1927 provides that courts can impose excess costs, expenses, and attorneys' fees on an attorney who "multiplies the proceedings in any case unreasonably and vexatiously." We have found that this standard is met "when an attorney knows or reasonably should know that a claim pursued is frivolous." *Tareco Props. Inc. v. Morriss* 321 F.3d 545, 550 (6th Cir. 2003) (internal quotation marks and citation omitted).

It is clear to us, in the wake of oral argument in this case, that Mackovski should have been aware of the frivolous nature of his client's claim. Moreover, the appellate brief filed on the petitioner's behalf includes arguments - particularly those relating to bias - that were not argued below, indicating that the attorney has multiplied the quantity, if not the quality, of frivolous issues on appeal. Although it is true that Sawukaytis filed the notice of appeal pro se and might well have pursued an appeal even in the absence of counsel, Mackovski was obligated, once contacted, to render advice discouraging further vexatious litigation Mackovski was certainly not obligated to undertake representation in this case, and his review of the facts, the law, and - most significantly the Tax Court judge's warnings on the record regarding the baseless nature of the litigation should have put Mackovski on notice that in pursuing an appeal, he and his client were risking the imposition of additional sanctions by this court. We thus have no difficulty in granting the Commissioner's final request and ordering that the award of $4,000 be imposed jointly and severally on the petitioner and his attorney.

CONCLUSION

For the reasons set out above, we AFFIRM the decision of the Tax Court finding the petitioner liable for the deficiency in income tax, plus interest, and the addition to tax as calculated in the decision entered on June 19, 2002, as well as the award of Sec. 6673 damages to the Commissioner set out in the same order. Moreover, we order imposition of Rule 38 damages in the amount of $4,000 jointly and severally against the petitioner and his attorney of record.

APPENDIX D
6th Circuit Court's Denial For Reconsideration

Case No. 02-2431

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER FILED
AUG 06, 2004
LEONARD GREEN, Clerk

MICHAEL SAWUKAYTIS
Petitioner – Appellant
v.

COMMISSIONER, INTERNAL REVENUE SERVICE
Respondent – Appellee

Upon consideration of the appellant's motion to reconsider this court's June 16, 2004 opinion,

It is ordered that the motion is hereby **DENIED.**

ENTERED BY THE ORDER OF THE COURT

S:/ Leonard Green, Clerk